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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/634,504

Applicant(s)

ALVERSON ET AL.

Examiner

Peter Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The following is a **FINAL** office action upon examination of application number 10/345,504. Claims 1-2 and 4-13 are pending in the application and have been examined on the merits discussed below.

### ***Response to Amendment***

2. Claim 1 has been amended. Claim 3 has been canceled. Claims 1-2 and 4-13 are pending in the application and have been examined on the merits discussed below.

### ***Official Notice***

3. As previously noted, Applicant attempted to challenge the Examiner's taking of Official Notice in the Office Action mailed April 5, 2006. There are minimum requirements for a challenge to Official Notice:

(a) In general, a challenge, to be proper, must contain adequate information or arguments so that *on its face* it creates a reasonable doubt regarding the circumstances justifying the Official Notice

(b) Applicants must seasonably traverse (challenge) the taking of Official Notice as soon as practicable, meaning the next response following an Office Action. If an applicant fails to seasonably traverse the Official Notice during examination, his right to challenge the Official Notice is waived.

Applicant has not provided adequate information or arguments so that *on its face* it creates a reasonable doubt regarding the circumstances justifying the Official Notice.

Therefore, the presentation of a reference to substantiate the Official Notice is not deemed necessary. The Examiner's taking of Official Notice has been maintained.

Bald statements such as, "the Examiner has not provided proof that this element is well known" or "applicant disagrees with the Examiner's taking of Official Notice and hereby requests evidence in support thereof", are not adequate and do not shift the burden to the Examiner to provide evidence in support of the Official Notice.

In the previous Office Action mailed April 5, 2006, notice was taken by the Examiner that certain subject matter is old and well known in the art. As explained in the previous Office Action mailed September 14, 2006, per MPEP 2144.03(c), these statements are taken as admitted prior art because no traversal of this statement was made in the subsequent response. Specifically, it has been taken as prior art that:

- It is old and well known in the art to administer surveys/questionnaires to people with sufficient knowledge and authority needed to provide accurate responses.
- It is an old and well-known fact that evaluations of a business (including financial and business practices) can be used for a plurality of applications, such as establishing insurance premiums or loans of credit.
- The surety underwriting process involves the analysis of financial, credit, and organizational capabilities of an organization, with substantial attention paid towards reviewing the contractor's business plan, history of operations, and evaluating the management of the company, with much emphasis being placed on financial strength and past performance of the contractor.

- It is an old and well-known fact that certifications are not indefinitely earned, but rather are distinctions of accomplishment over a specific period of time that become invalid and require renewal after a predetermined period of time.

In the previous Office Action mailed December 7, 2004, notice was taken by the Examiner that certain subject matter is old and well known in the art. As explained in the previous Office Action mailed June 15, 2005, per MPEP 2144.03©, these statements are taken as admitted prior art because no traversal of this statement was made in the subsequent response. Specifically, it has been taken as prior art that:

- It is old and well known in the art that results derived from a questionnaire or auditing process are quantifiable and therefore allows a number of statistical means, including graphs, to be used in an analysis or comparison
- It is old and well known in the art that graphical representations of data can be used as a method of comparison
- The concept and advantages of providing for displays which recognize a contractor's services exceeding industry standards is old and well known in the art
- Contractors who receive recognition or certification would adapt symbols of recognition, certification, or similar awards for use in promotion of their business, whether it be on stationary, the company website, or other mediums of advertising

- Contractors (and firms) subjecting themselves to assessment, evaluation or certification will receive some sort of notification (usually in written form) regarding their performance
- Process and project execution practice are measures that are vital components in defining a company's management practices and an evaluation of these practices would be needed to formulate a comprehensive assessment that can be used to compare the company with other companies

### ***Response to Arguments***

4. Applicant's arguments filed July 27, 2007 have been fully considered but they are not persuasive.

Applicant argues that GuruNet does not establish financial information that can be utilized by a lender as a basis for support of critical financial lending decisions.

The Examiner respectfully disagrees. As presented by the Examiner, GuruNet is directed towards evaluating the financial status of a company, by evaluating the company's ability to pay bills and collect receivables on time, maintaining solid cash flows, cost efficiency through minimization of waste and costs, use of detailed budgets, utilization of all possible sources of capital, accuracy in project/case/job costing/estimation methods, relationships with bankers, successful evaluation of credit risks, minimization of bad debts, etc. [see Retail Evaluation statements 72-74, 76-89,

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and 127, Manufacturing Evaluation statements 57-68, and 123, Wholesale Evaluation Statements 67-83 and 126, Service Evaluation Statements 71-85, 98-100 and 138]. Furthermore, the Applicant has not specified the level of evaluations deemed to be "necessary" to predicate risk ranking in securing lines of credit. The claim language merely cites that the assessment of financial practices is used.

Furthermore, as mentioned above, the Applicant has not timely or adequately challenged the Official Notice raised by the Examiner in the previous Office Action mailed April 5, 2006. Thus, it has been admitted as prior art that it is old and well known in the art that evaluations of a business can be used for a plurality of applications, such as establishing insurance premiums or loans of credit, and that the surety underwriting process involves the analysis of financial, credit, and organizational capabilities of an organization, with substantial attention paid towards reviewing the contractor's business plan, history of operations, and evaluating the management of the company, with much emphasis being placed on financial strength and past performance of the contractor. Thus, the Examiner asserts that an artisan of ordinary skill in the art would take the financial evaluations of a contractor, as provided by GuruNet, to obtain insurance premiums or establish loans of credit from surety institutions.

Applicant argues that none of Aycock et al., GuruNet, and Bladen et al., taken alone, or in combination, discloses or suggests a contractor certification system utilizing a survey means comprising a questionnaire provided to selected candidates comprising

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workers, foremen, project managers, engineers, and principals, found within different organizational levels of a contractor's business. The Applicant argues that while it may be known in the art to administer surveys to people with sufficient knowledge and an authority, it is not known in the art to administer a given survey to a full gamut of candidates throughout all levels of an organization.

The Examiner respectfully disagrees. GuruNet teaches to distribute the appropriate list of questions to the staff of a company, which would include various levels of employees. The Examiner asserts that the staff of a company would comprise workers from a plurality of organizational levels (i.e., workers, supervisors, management, mid-management, upper-management, etc.); thus workers and management alike would be given the list of questions for evaluation. In Aycock et al., in order to submit a RFP/RFQ, appropriate information must be obtained from those who are knowledgeable with the operations of the contractor's business. Although Aycock et al. does not explicitly disclose the job title/role or organizational hierarchical position (workers, foremen, project manager, engineers, and principals) of survey recipients. However, the job title and/or role of survey participants does not affect the structure or manipulative steps associated with conducting a survey and therefore doesn't merit patentable weight.

Furthermore, as mentioned above, the Applicant has not timely or adequate challenged the Official Notice raised by the Examiner in the previous Office Action



mailed April 5, 2006. Thus, it has been admitted as prior art that it is old and well known in the art to administer surveys/questionnaires to people with sufficient knowledge and authority needed to provide accurate responses. As Aycock et al., GuruNet and Bladen et al. are directed towards a questionnaire/survey evaluation of a contractor's business, an artisan of ordinary skill in the art would administer the survey/questionnaire to the people with sufficient knowledge and authority needed to provide accurate responses, such as workers, foremen, project managers, engineers and principals.

Applicant argues that Aycock et al. does not teach a method that utilizes on-location assessment upon compiling answers and correlating matches, discrepancies, and inadequate information.

The Examiner respectfully disagrees. In Aycock et al., the scoring of responses to the questionnaire is based on a predetermined "answer key" **(a response schedule may identify 10 possible items that may be identified in the supplier's response. In this case, the supplier receives a predetermined point value for each item identified in the supplier's response)** [Column 7, lines 7-10] and the adequacy of the response **(if a supplier answers "no", or does not provide a response, the supplier would receive a score of "0" for that particular maturity question)** [Column 6, lines 63-65]. The Examiner asserts that the supplier responses are compared (awarding points for correlating matches with the response schedule, discrepancies are not awarded any points, inadequate answers are given a score of "0"), and based on the

maturity score, a decision is made regarding the necessity of an on-location assessment; thus, the on-location assessment of Aycock et al., is indeed utilized upon compiling questionnaire answers and correlating matches, discrepancies and inadequate information.

Applicant argues that Aycock et al. does not provide on-location and on active project site auditing automatically or in every case; rather, the Applicant argues that Aycock et al. only calls for on-site assessment when a supplier cannot or is not automatically approved.

The Examiner agrees that Aycock et al. does not automatically provide on-location/onsite project site auditing. However, this does not preclude the fact that the Aycock et al. system does indeed teach the step of on-location/onsite project site auditing. Although the on-location/onsite project site auditing is not mandatory in every instance in the Aycock et al. system, there are instances in which the on-location/onsite project site auditing is performed, thus meeting the limitation of the claim.

Applicant argues that the on-location assessments taught by Bladen et al. is electronic and does not involve on-location auditing by a third party.

The Examiner respectfully disagrees. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the

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features upon which applicant relies (i.e., third party on-location auditing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Specifically, the Examiner points out that the independent third party is used to assess a contractor's practices (see limitation a). The on-location assessment means (limitation d) is not explicitly disclosed as being performed by a third party. Further, Bladen does teach the step of on-location auditing **(this part of the system contains all the audit details as a result of the field audit carried out by the FSS Environmental Health Consultant)** [Paragraph 97, Figure 10c].

Regardless, the step of third party auditing is taught by Aycock et al. **(the on-site audit, also referred to as a supplier site evaluation, is typically performed by the purchasing agent and/or employees/consultants of the buying entity {the purchasing agent may be an independent agent acting on behalf of the buying entity})** [Column 8, lines 20-24].

5. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues claim 1 as amended, which has been addressed in the updated Office Action below. Specifically, Applicant argues that the evaluation metrics of Aycock

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et al. are not indicative of business practices, but are merely indicative of a technical ability of a supplier to supply a given product and to therefore act as a vendor for same. Applicant has defined business practices as comprising management structure, reporting structure, internal communications procedures, safety and labor management practices.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 - 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aycock et al. (Patent No. #5,765,138) in view of GuruNet's "Business Evaluation Statements" (herein referred to as GuruNet), further in view of Bladen et al. (Patent Application No. #US2002/0099586A1) and the Award Expiration/Closeout section of the University of Utah Research Handbook (reference 1-U, herein referred to as The Utah Research Handbook)

As per claim 1, Aycock et al. teaches a contractor certification (supplier evaluation) system comprising:

(a) survey means comprising a questionnaire (**RFP/RFQ**), which is provided to selected candidates (**suppliers that desire to be qualified as vendors**) within a contractor's business for gathering answers concerning information detailing practices, said answers being used for assessing practices of said contractor by an independent third party (**the purchasing agent identifying the set of technical requirements that need to be met may be a contracting department of the buying entity, or an independent agent acting on behalf of the buying entity**), [Column 1, lines 55-56, Column 6, lines 1-9];

(c) mapping means for studying said answers provided to said questionnaire to select job site visits and candidates for interviews (**after scoring the supplier responses, a supplier maturity level is calculated by correlating the score of each supplier response with the weighting value of the corresponding maturity question... it is then determined whether the supplier meets the minimum maturity level... if it is determined that an automatic approval of a supplier cannot be made, then an additional tier 2 analysis is performed namely performance of an on-site supplier audit to validate the supplier responses, and to gain any additional information necessary to complete the supplier selection process**) {thus, job site visits are dependent on the mapping of answers with the maturity questions} [Column 7, lines 14-65], said mapping means comprising examining and correlating said answers to determine matches, discrepancies and inadequate details (**if a supplier answers "no", or does not provide a response, the supplier would receive a score of "0" for that particular maturity question; a response schedule**

**may identify 10 possible items that may be identified in the supplier's response.**

**In this case, the supplier receives a predetermined point value for each item identified in the supplier's response)** [Column 6, lines 63-65, Column 7, lines 7-10];

(d) on-location assessment (**on-site audit**) means for determining (**validating**) business practices at the contractor's operations, said assessment means comprising asking questions to each of said candidates selected through said mapping means (**the RFP/RFQ questions are directed towards a set of technical requirements that need to be met by prospective vendors and towards a set of selected quality maturity questions, thus the questions are based on a "mapping" of technical requirements; the questions are weighted corresponding to their relative sophistication or relevance to the project objective, thus the importance of the responses to the questions have been "mapped"**) and observing examples of the contractor's business practices (**the on-site audit includes validating the supplier responses to the RFP/RFQ, either by performing actual tests on hardware equipment or software systems, and/or reviewing the quality control procedures and processes at the supplier site**) [Column 1, lines 45-49, Column 3, lines 24-29, Column 6, lines 19-54, Column 7, lines 62-65, Column 8, lines 27-31, Column 12, lines 47-50];

(e) comparison means (**risk assessment**) for assessing business practices (**technical capabilities**), and ranking the contractor in comparison with industry standards {**The supplier quality maturity assessment process is based upon**

**national and international standards including ISO 9001/ISO 9000-3, which are industry standards for quality}** [Column 8, lines 58-63]; and

(f) reporting means **(product database)** for providing a grade indicative of said contractor's rank **(competitive analysis of all vendors to determine the respective performance)** [Column 9, lines 59-67 and Column 10, lines 1-17].

Although Aycock et al. is not explicitly directed towards building contractors, contractors encompass various types of contractors (i.e., vendors, suppliers, building contractors, etc.); thus, an artisan of ordinary skill in the art would look to apply the teachings of Aycock et al. towards certifying specific types of contractors, such as building contractors.

Further regarding (a), Aycock et al. does not further explicitly disclose assessment means for determining the business and financial practices of a contractor's practices, comprising management structure, reporting structure, internal communications procedures, safety and labor management practices, current projects, funding, gross margins, and close out procedures.

However, GuruNet is directed to the analogous art of providing survey means for evaluating the business and financial practices of a company, said business practice information comprising management structure **(Questions 42, 43, 52-59, 102 of Retail, Questions 29, 30, 92 of Manufacturing, Questions 38, 39, 40, 41 of Wholesale,**

**Questions 37-40, 107-110 of Service), reporting structure (Questions 44, 45, 118, 119 of Retail, Questions 36, 37 of Manufacturing), internal communications procedures (Questions 108, 109, 118, 119 of Retail, Questions 33, 116, 117 of Manufacturing, Questions 129, 130 of Service), safety and labor management practices (Questions 121, 123 of Retail, Questions 108, 119, 121 of Manufacturing, Questions 132-165 of Service), and said financial practices of a contractor's operations comprising current projects (Question 77 of Retail, Questions 60, 62 of Manufacturing, Questions 71, 74, 97 of Service), funding (Questions 76, 78 of Retail, Question 72 of Wholesale, Questions 75, 76 of Service), gross margins (Question 87 of Retail)**

GuruNet teaches a set of assessment statements given to staff members of a company **(Consider distributing the appropriate list of questions to your staff, have them rate each statement on a scale of 1-10, tally up and average the scores, and determine which areas need the most improvement)** [Page 1] that can be used to evaluate the financial practices **(paying bills, collecting receivables, budget analysis, accounting systems, sources of capital, cost efficiency, minimization of costs, cash flow levels)** of a company [Retail Questions 72-74, 76-89, and 127, Manufacturing Questions 57-68, and 123, Wholesale Questions 67-83, and 126, Service Questions 71-85, 98-100 and 138].



Aycock et al. is directed towards evaluating the capabilities of potential vendors using on-site audits and questionnaires, while GuruNet is directed towards surveying staff to evaluate the capabilities of a company. Thus, both references relied upon by the Examiner are directed towards interactively evaluating the capabilities of a business.

Aycock et al. is directed towards evaluating the business practices of potential contractors, whereas GuruNet is applied to any generic business; thus, an artisan of ordinary skill in the art would look to glean the evaluation methods of GuruNet and Bladen et al. to modify Aycock et al. to yield a more comprehensive means of evaluating the qualifications of potential contractors. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Aycock et al. to include the evaluatory statements directed towards business and financial practices presented by GuruNet, because doing so would allow Aycock et al. to evaluate the business and financial practices of a potential contractor, a factor utilized by surety institutions in the surety underwriting process involving the analysis of financial, credit, and organizational capabilities of an organization, with substantial attention paid towards reviewing the contractor's business plan, history of operations, and evaluating the management of the company, thereby yielding a more comprehensive means of evaluating the qualifications of potential contractors, especially since much emphasis is placed on financial strength and past performance of the contractor.

Furthermore, it has been admitted as prior art that it is old and well known in the art that evaluations of a business can be used for a plurality of applications, such as establishing insurance premiums or loans of credit, and that the surety underwriting process involves the analysis of financial, credit, and organizational capabilities of an organization, with substantial attention paid towards reviewing the contractor's business plan, history of operations, and evaluating the management of the company, with much emphasis being placed on financial strength and past performance of the contractor. Thus, the Examiner asserts that an artisan of ordinary skill in the art would take the financial evaluations of a contractor, as provided by GuruNet, to obtain insurance premiums or establish loans of credit from surety institutions.

The combined teachings of Aycock et al. and GuruNet do not explicitly teach the step of assessing a contractor's close out procedures.

However, the Utah Research Handbook teaches the use of closeout procedures **(Projects may require some or all of the following reporting: final technical, final financial, and property inventory for both purchased and government supplied equipment. A closeout may also require the submission of a final invoice and a "Contractor's Release")** [Paragraph 1].

Aycock et al. is directed towards evaluating the capabilities of potential vendors using on-site audits and questionnaires. GuruNet is directed towards surveying staff to

evaluate the capabilities of a company. Similarly, Utah Research Handbook outlines routine procedures expected of contractors. Thus, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the Aycock-GuruNet combination to include closeout procedures as taught by the Utah Research Handbook in the assessment step, because disclosing technical and financial information regarding specific projects in evaluating the fiscal responsibility of contractors, enhances the ability of the Aycock-GuruNet combination to assess the business and financial practices of a contractor.

As per (b) providing a questionnaire to selected candidate comprising workers, foremen, project managers, engineers, and principals:

Aycock et al. does not explicitly disclose the job title/role or organizational hierarchical position (workers, foremen, project manager, engineers, and principals) of survey recipients. However, the job title and/or role of survey participants does not affect the structure or manipulative steps associated with conducting a survey and therefore doesn't merit patentable weight. Furthermore, it has been admitted as prior art as a result of improperly and/or untimely challenged Official Notice that it is old and well known in the art to administer surveys/questionnaires to people with sufficient knowledge and authority needed to provide accurate responses. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Aycock et al. to administer surveys/questionnaires to certain workers and management within different levels of the company being evaluated because the

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resulting combination would provide useful representative information from credible sources familiar with the inner workings of the organization, thereby providing accurate and credible information for the evaluation of said organization.

As per limitation (d), the combined teachings of Aycock et al., GuruNet, and The Utah Research Handbook fail to teach the step of on-location assessments visiting several active job sites at which a contractor is involved.

However, Bladen et al. teaches conducting on-location assessments where several active job sites at which a contractor is involved are visited **(A client refers to a company or other organization. A client can then, in turn contain multiple sites; Each client can have one or more sites; An environmental health consultant or regulatory official conducting an audit or setting up an audit for a company comprising many sites can access all the audit information for the entire company all at once {thus, audit information collected for each of a plurality sites of a company are considered when conducting or setting up an audit for a company})** [Paragraphs 122, 250, 257].

Aycock et al. and GuruNet are directed to the analogous art of providing survey means for evaluating the business and financial practices of a company. The Utah Research Handbook outlines routine procedures expected of contractors. Bladen et al. is directed to the analogous art of assessing the risk of an organization based on an

audit comprising a set of questions, criteria and/or other measurables; therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of the Aycock-GuruNet-Utah Research Handbook. to visit multiple job sites at which a contractor is involved, because doing so would allow the Aycock-GuruNet-Utah Research Handbook combination provide a comprehensive evaluation of a contractor's practices at all sites at which said contractor is involved, thereby allowing comparison between audits performed at various points in time for an entity or comparison of different entities' risk assessment, as taught by Bladen et al. [Paragraph 107].

Aycock et al. does not explicitly teach (f): said reporting means further comprising generation of a comparative report that provides a listing of key risk factors and highlights said business and financial practices and risk factors of said contractor in comparison of said risk factors, said risk factors comprising said operational structure, marketing of new projects, current projects, details of project execution, safety procedures, statutory compliance, project administration, mediation/arbitration procedures and past litigation.

However, GuruNet teaches the step of collecting information regarding operational structure (**Questions 42, 43, 52-59, 102 of Retail, Questions 29, 30, 92 of Manufacturing, Questions 38, 39, 40, 41 of Wholesale, Questions 37-40, 107-110 of Service**), marketing of new projects, current projects, details of project execution, and

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project administration (**Questions 44, 45, 46, 47, 48, of Retail relating to delegation of responsibilities and authority, the existence of standard written operating procedures, planning and implementation monitoring of activities, timely completion of operations and projects, Questions 36, 37 of Manufacturing**).

Aycock et al. is directed towards evaluating the capabilities of potential vendors using on-site audits and questionnaires, while GuruNet is directed towards surveying staff to evaluate the capabilities of a company. Thus, both references relied upon by the Examiner are directed towards interactively evaluating the capabilities of a business. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Aycock et al. to include collected information regarding a contractor's operational structure, marketing of new projects, current projects, details of project execution, and project administration in a comparative report, because doing so would further enhance the ability of Aycock et al. to evaluate the business and financial practices of a potential contractor, a factor utilized by surety institutions in the surety underwriting process involving the analysis of financial, credit, and organizational capabilities of an organization, with substantial attention paid towards reviewing the contractor's business plan, history of operations, and evaluating the management of the company, thereby yielding a more comprehensive means of evaluating the qualifications of potential contractors, especially since much emphasis is placed on financial strength and past performance of the contractor.

Further, although not explicitly taught by the Aycock-GuruNet combination, Bladen et al. teaches comparative audit reports (**Audit module 234 contains all of the functionality associated with performing audits including the creation of external audits reports including scores and analyses and the listing of standards against which audits are taken; The Standards menu lists the standard that the site was marked against**) [Paragraphs 280, 383, 597-621, Figures 8I, 8J] based on information collected in the assessment of a contractor's business and financial practices {**The report in Figure 8J includes the audit, standard answers and actions, training, and examination results**} highlighting the business and financial practices and risk factors of a contractor, said risk factors comprising marketing of new procedures (**in an embodiment, step 746 includes performing an initial audit and generating periodic procedures and/or instructions to be performed over a period of time**) [Paragraph 148], safety procedures and statutory compliance {**compliance to The Food Safety (General Food Hygiene) Regulations 1995**} [Figure 8E].

Aycock et al. and GuruNet are directed to the analogous art of providing survey means for evaluating the business and financial practices of a company. Bladen et al. is directed to the analogous art of assessing the risk of an organization based on an audit comprising a set of questions, criteria and/or other measurables; therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the reporting means of Aycock et al. to include a comparative report including marketing of new procedures, safety procedures and statutory compliance, because doing so would

allow the Aycock–GuruNet combination to provide a comprehensive evaluation of a contractor's practices, thereby allowing benchmark comparisons between audits performed at various points in time for an entity or comparison of different entities' risk assessment, as taught by Bladen et al. [Paragraph 107].

The Aycock-GuruNet-Bladen-Utah Research Handbook combination does not explicitly disclose mediation/arbitration procedures and past litigation.

However, Official Notice is taken that disclosing a company's past legal history in assessing risk for underwriting a loan to said company is old and well known in the art. For example, a litigation history along with the decisions and monies awarded/paid as a result of settlement/mediation/arbitration may be disclosed in the financial accountings of said company. Thus, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the combined teachings of Aycock-GuruNet-Bladen-Utah Research Handbook to include the step of disclosing mediation/arbitration procedures and past litigation, because doing so would further enhance the ability of Aycock et al. to evaluate the business and financial practices of a potential contractor, a factor utilized by surety institutions in the surety underwriting process involving the analysis of financial, credit, and organizational capabilities of an organization, with substantial attention paid towards reviewing the contractor's business plan, history of operations, and evaluating the management of the company, thereby yielding a more comprehensive means of evaluating the qualifications of potential contractors,



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especially since much emphasis is placed on financial strength and past performance of the contractor.

As per claim 2, although not taught by Aycock et al., GuruNet teaches a contractor certification (**company evaluation**) system with a questionnaire (**list of statements**) composed of non-threatening (**objective**) questions. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Aycock et al. to include the questionnaire featuring non-threatening questions as taught by GuruNet because doing so would enable Aycock et al. to obtain an honest opinion regarding information necessary to conduct a proper analysis of a company's practices, as the surety underwriting process involves the analysis of financial, credit, and organizational capabilities of an organization, with substantial attention paid towards reviewing the contractor's business plan, history of operations, and evaluating the management of the company, thereby providing more reliable and dependent data on which to make an accurate evaluation of the company.

As per claim 3, although not taught by the combined teachings of Aycock et al. and GuruNet, Bladen et al. teaches a contractor certification (**risk assessment**) system where the mapping means (**graphs of results**) develops, within answers to questions, areas comprising clear matches, clear discrepancies and inadequate details for on location assessment. [Paragraph 0345]

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the combined teachings of Aycock et al. and GuruNet to include a mapping means because doing so enables Aycock et al. to compare the results of a contractor in a particular aspect or the response to a particular question from the questionnaire, since results from a questionnaire can be quantified and graphed, and the graphs may highlight strengths or weaknesses of a contractor in comparison to competitors or industry standards that may otherwise be overlooked, thereby providing the ability to benchmark best practices of contractors.

As per claim 4, Aycock et al. teaches a contractor certification **(supplier evaluation)** system where the on-location **(on-site)** assessments **(evaluations)** comprise job site visits **(on-site audit)** [Column 3, line 36 and Column 8, lines 20-24].

As per claim 5, Aycock et al. teaches a contractor certification **(supplier evaluation)** system where the comparison means comprises an evaluation of the contractor's business practice data against one or more databases containing performance and risk factor data from similar contractors **(existing and historical vendor performance and on-site audit reports)**, stored by the contractor certification **(supplier evaluation)** system [Column 9, lines 38-57].

As per claim 6, the combined teachings of Aycock et al., GuruNet, and Bladen et al. are silent regarding the use of a special logo or insignia to represent the caliber of a

contractor's work or the successful completion of the certification program. However, it has been admitted as prior art as a result of improperly and/or untimely challenged Official Notice that the concept of providing for a display that recognizes that a contractor's services exceed industry standards is old and well known in the art. It has also been admitted as prior art as a result of improperly and/or untimely challenged Official Notice that it is old and well known in the art that contractors who receive recognition or certification would adapt it for use in promotion of their business, whether it be on stationary, the company website, or other mediums of advertising.

It has also been admitted as prior art as a result of improperly and/or untimely challenged Official Notice that it is old and well known in the art that when a contractor **(or any firm)** subjects itself to assessment, evaluation, or certification, the firm will receive some sort of notification **(usually in written form)** regarding their performance. This notification will entail the findings of the assessment, evaluation, or certification, and can be used by surety institutions in underwriting loans to the contractor.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the combined teachings of Aycock et al., GuruNet and Bladen et al. to notify contractor's of their ability to use a special logo or insignia representing the caliber of work performed or successful certification, because doing so would enable participants (contractors) to embark in marketing campaigns to publicly display a certification mark in conjunction with its goods and advertisements, the

certification mark having discernable value in the marketplace, signifying the quality of the participant's work and the willingness to be an exemplary organization within the industry, thereby enabling participants to be recognized for the quality of work performed, making the public aware of the participant's accomplishments and abilities.

As per claim 7, the teachings of Aycock et al. fail to disclose the composition of the administered questionnaire. However, GuruNet teaches a series of business evaluation statements that comprises questions directed to organizational aspects with particular reference to management structure [Retail Questions 42,43,52-59,89], authority delegation [Retail Questions 44-45, Manufacturing Question 92, and Wholesale Questions 40-41], and decision-making practices [Retail Questions 49, Manufacturing Questions 31, and 37, Service Questions 39-40,]. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Aycock et al. to include questions directed to management structure, authority delegation, and decision-making practices as taught by GuruNet to obtain an understanding of key organizational aspects that impact the daily operations of the company, making it possible to compare practices with the practices of other firms, and further because the surety underwriting process involves the analysis of financial, credit, and organizational capabilities of an organization, with substantial attention paid towards reviewing the contractor's business plan, history of operations, and evaluating the management of the company.

As per claim 8, the teachings of Aycock et al. fail to disclose the composition of the administered questionnaire. However, GuruNet teaches a series of business evaluation statements that comprises questions directed to managerial aspects with particular reference to marketing [Retail Questions 1-4 and 6-13, 114-117, 132, Manufacturing Questions 3,7,9-10,12, 112-114, Wholesale Questions 1-11, 13, 115-117, and Service Questions 2-8, 10-12, and 125-127].

Although GuruNet does not teach any questions regarding a company's bidding process and project execution practice, it has been admitted as prior art as a result of improperly and/or untimely challenged Official Notice that it is old and well known in the art that these measures are vital components in defining a company's management practices and an evaluation of these practices would be needed to formulate a comprehensive assessment that can be used to compare the company with other companies.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Aycock et al. to include questions directed to marketing, bidding processes, and project execution practices as taught by GuruNet because doing so would enable Aycock et al. to obtain an understanding of key managerial aspects that impact the daily operations of the company, making it possible to compare practices with the practices of other firms, and further because the surety underwriting process involves the analysis of financial, credit, and organizational

capabilities of an organization, with substantial attention paid towards reviewing the contractor's business plan, history of operations, and evaluating the management of the company, thereby providing a more comprehensive means of evaluating potential contractors.

As per claim 9, Aycock et al. teaches a contractor certification (**supplier evaluation**) system as recited by claim 5, where the database (**vendor database**) stored comprises a compilation of business and financial and risk data derived from contractors previously evaluated (**existing and historical vendor performance or on-site audit reports**) [Column 9, lines 38-57].

As per claim 10, Aycock et al. teaches a contractor certification (**supplier evaluation**) system as recited by claim 6, where the comparison report (**vendor performance report**) sets forth said contractor's business practices (**vendor performance and on-site audit reports**) with detail sufficient to assist surety institutions engaged in underwriting a contractor's credit line [Column 9, lines 38-57].

Claim 11 recites limitations already addressed by the rejection of claim 6 above; therefore, the same rejection applies.

As per claim 12, neither Aycock et al., GuruNet, nor Bladen et al. explicitly teaches a contractor certification system as recited by claim 1, wherein said reporting

means is provided to lending institutions for determining an amount of credit to extend to said contractor's business.

However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is an old and well-known fact that evaluations of a business (including financial and business practices) can be used for a plurality of applications, such as establishing insurance premiums or loans of credit. The surety underwriting process involves the analysis of financial, credit, and organizational capabilities of an organization, with substantial attention paid towards reviewing the contractor's business plan, history of operations, and evaluating the management of the company. Much emphasis is placed on financial strength and past performance of the contractor.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the combined teachings of Aycock et al., GuruNet and Bladen et al. to include the step of providing an analytical report resulting from an administered survey to lending institutions because the contents of the analytical report contains information routinely used in the surety underwriting process when determining an amount to loan or insure the business for, and also because the attainment of certification would be representative of a company's overall operations, including financial, credit, organizational capabilities, business plan, history of operations, and management of the company; thus, providing an analytical report resulting from the

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administered survey would be used by surety institutions in the evaluation of the risks and capabilities of a company.

As per claim 13, neither Aycock et al., GuruNet, nor Bladen et al. explicitly teaches a contractor certification system as recited by claim 1 that is repeated annually.

However, it has been admitted as prior art, as a result of untimely and/or improperly challenged Official Notice, that it is an old and well-known fact that certifications are not indefinitely earned, but rather are distinctions of accomplishment over a specific period of time that become invalid and require renewal after a predetermined period of time. Therefore, it would have been obvious to one of ordinary skill in the art to modify the combined teachings of Aycock et al., GuruNet and Bladen et al. to repeat the certification system on an annual basis in order because doing so would enable the Ayock–GuruNet–Bladen combination to reflect up-to-date changes in evaluation standards that have been rendered obsolete over time, changes in regulations applicable to a company and/or the field of endeavor in which the company conducts business, changes in a business' performance and worth as indicated by financial and business practices, changes in management, or simply to resolve the status of a company's expiring certification, thereby providing accurate evaluations of a company's performance, according to current certification criteria.



***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Guinta et al. (USPGPub 2002/0137015)

Beshore (USPGPub 2002/0184073)

The 1993 Award Criteria for the Malcolm Baldrige National Quality Award (reference 1-V) discloses a process of evaluating the quality of companies in businesses, in which companies that excel are given awards. Award recipients may publicize and advertise receipt of the award.

Surety Canada (reference 1-W) discloses the process of contractors obtaining surety bonds. Contractors need to disclose a plurality of information to a surety broker, including an organizational chart, business plan, job/project history, financial statements, line of credit, letters of recommendation, work in progress, etc.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Choi whose telephone number is (571) 272 6971. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PC

October 10, 2007

*Romain Jeanty*  
ROMAIN JEANTY  
Primary Examiner  
Art Unit 3623